

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

---

**Complaint of Verizon Massachusetts  
Concerning Customer Transfer Charges  
Imposed by Broadview Networks, Inc.**

---

)  
)  
)  
)  
)

**D.T.E. 05-04**

**INITIAL BRIEF OF  
BROADVIEW NETWORKS, INC.**

**Charles C. Hunter  
Executive Vice President and General Counsel  
Broadview Networks, Inc.  
115 Stevens Avenue, Third Floor  
Valhalla, New York 10595  
Telephone: (914) 468-8214  
Facsimile: (914) 742-5818  
Email: [chunter@broadviewnet.com](mailto:chunter@broadviewnet.com)**

**July 11, 2005**

## TABLE OF CONTENTS

	Page
<b>I. ISSUES TO BE RESOLVED .....</b>	<b>2</b>
<b>II. PERTINENT STATUTORY AND CASE LAW .....</b>	<b>2</b>
<b>III. APPLYING THE LAW TO THE FACTS .....</b>	<b>6</b>
<b>A. Broadview Service Transfer Charges Recover         Costs Associated with the Performance of Services         Requested by and for the Benefit of Verizon MA .....</b>	<b>6</b>
<b>B. Broadview's Service Transfer Charges Mirror         Charges Levied on Broadview by Verizon MA         For the Performance of Comparable Tasks .....</b>	<b>9</b>
<b>C. Verizon Acknowledges that for Years It has         Gratuitously Imposed Additional Costs on         Broadview .....</b>	<b>14</b>
<b>D. Verizon Failure to Pay Charges Resident         In Effective Tariffs was and is Illegal .....</b>	<b>18</b>
<b>IV. CONCLUSION .....</b>	<b>20</b>

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

---

**Complaint of Verizon Massachusetts  
Concerning Customer Transfer Charges  
Imposed by Broadview Networks, Inc.**

---

)  
)  
)  
)  
)

**D.T.E. 05-04**

**INITIAL BRIEF OF  
BROADVIEW NETWORKS, INC.**

By Complaint filed in the captioned proceeding on January 31, 2005, Verizon Massachusetts (“Verizon MA”) urged the Department to conclude that the Service Transfer Charges set forth at Section 9.1 of Broadview Network, Inc.’s (“Broadview”) Tariff M.D.T.E. No. 2 are “unlawful, unjust, unreasonable, and contrary to public policy.”<sup>1</sup> According to Verizon MA, “Broadview’s Service Transfer Charges clearly lack any relationship to any wholesale service that Broadview provides to Verizon MA or to any costs that Broadview incurs on Verizon MA’s behalf for the transfer of customers.” As every regulatory authority addressing Verizon MA’s claims has concluded, Verizon MA, in so asserting, is flat wrong. When imposed upon Verizon MA, Broadview’s Service Transfer Charges recover costs incurred at the request and for the benefit of Verizon MA and hence are not only lawful, but, because they mirror charges levied on Broadview by Verizon MA for the performance of comparable tasks, are just and reasonable as well.

---

<sup>1</sup> Complaint of Verizon Massachusetts Concerning Customer Transfer Charges Imposed by Broadview Networks, Inc., filed in D.T.E. on January 31, 2005 (“Verizon Complaint”).

## **I.**

### **ISSUES TO BE RESOLVED**

The issues presented by Verizon MA's Complaint for the Department's determination are simple and straightforward. Does Broadview have the right to charge Verizon MA for, and hence recover the costs associated with, the performance of services requested by and for the benefit of Verizon MA? And if Broadview is entitled to so charge Verizon MA, is it appropriate for Broadview to charge the amount levied on Broadview by Verizon MA for the performance of comparable tasks? These are the central, foundational issues to be resolved by the Department here. Other ancillary matters to be addressed by the Department arise out of the willful imposition by Verizon of additional costs on Broadview as a result of Verizon MA's previous gratuitous refusal to utilize Broadview's electronic interfaces and Verizon MA's unilateral refusal to pay charges lawfully tariffed by Broadview.

## **II.**

### **PERTINENT STATUTORY AND CASE LAW**

The statutory and case law pertinent to the resolution of the principal matters at issue here are almost as simple and straightforward as the issues presented for the Department's determination by Verizon MA's Complaint. Section 251(c)(2)(D) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Federal Communications Act"), requires that Broadview be allowed to charge Verizon MA for the performance of services requested by and for the benefit of Verizon MA, particularly when those services are comparable to those for which Verizon MA

charges Broadview.<sup>2</sup> Moreover, under the Federal Communications Act, “rates charged by competitors are presumed reasonable as long as they do not exceed the comparable rate charged by the incumbent.”<sup>3</sup> Hence, if the services for which Broadview assesses its Service Transfer Charges are performed at the request and for the benefit of Verizon MA and are comparable to those for which Verizon levies its Service Order Charge and Manual Intervention Surcharge, then Broadview’s Service Transfer Charges, and the levels at which these charges are set, are lawful under the Federal Communications Act, as well as just and reasonable.

The Federal Communications Commission (“FCC”) had occasion to apply these statutory mandates in arbitrating and resolving various interconnection disputes between Cavalier Telephone, LLC (“Cavalier”) and Verizon Virginia, Inc. (“Verizon VA”). Most pertinent here are the FCC’s rulings regarding a proposal by Cavalier “to impose a winback charge on Verizon VA for the tasks it performs when it migrates a customer to Verizon [VA].”<sup>4</sup>

The FCC, having concluded that “Cavalier’s work in connection with a Verizon [VA] winback is similar in purpose and scope to the work that Verizon [VA] is responsible for performing when Cavalier submits a local service request to Verizon [VA] to move a customer from Verizon [VA] to Cavalier,” permitted Cavalier “to impose

---

<sup>2</sup> 47 U.S.C. § 251(c)(2)(D); *In the Matter of Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act of Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Arbitration*, 18 FCC Rcd 25,887, ¶¶ 189, 203 - 205 (CCB released Dec. 12, 2003) (“*Arbitration Order*”).

<sup>3</sup> *Arbitration Order*, 18 FCC Rcd 25,887 at ¶ 205, fn. 679 (citing “*Local Competition First Report and Order*, 11 FCC Rcd at 16,040 - 42, paras. 1,085 - 89”).

<sup>4</sup> *Id.* at ¶ 200.

a winback charge on Verizon [VA] for the tasks it performs when it migrates a customer to Verizon [VA].”<sup>5</sup> In so doing, the FCC rejected Verizon [VA]’s claim that the services performed by Cavalier “in the course of transferring customers from Cavalier to Verizon [VA]” were not for the “benefit of Verizon [VA],” as well as Verizon VA’s related contention that “the ‘winback’ services for which Cavalier propose[d] to charge Verizon [VA] . . . [were] retail functions properly charged to an end user.”<sup>6</sup> As explained by the FCC, “Cavalier is responsible for effecting certain key functions for the benefit of Verizon [VA] in the course of transferring customers from Cavalier to Verizon [VA],” and moreover, “contrary to Verizon [VA]’s allegations, the work Cavalier performs in connection with the Verizon [VA] winback is not solely for the benefit of Cavalier’s internal records.”<sup>7</sup> As to the appropriate level of the Cavalier winback charge, the FCC, having noted that the services for which Cavalier proposed to charge Verizon VA were “the same or similar to services covered by Verizon [VA]’s Service Order Charge and Installation charges,” concluded that it was “reasonable to permit Cavalier to charge Verizon [VA] the rate Verizon [VA] charges it for the same or similar service.”<sup>8</sup>

The New York Public Service Commission (“NYPSC”) applied these same statutory mandates recently in resolving a complaint brought by Verizon New York Inc. (“Verizon NY”) challenging, like its sister company here, the lawfulness of Broadview’s Service Transfer Charges. Like Verizon MA here, Verizon NY had argued

---

<sup>5</sup> *Arbitration Order*, 18 FCC Rcd 25,887 at ¶¶ 200, 204.

<sup>6</sup> *Id.* at ¶ 201.

<sup>7</sup> *Id.* at ¶ 204

<sup>8</sup> *Id.* at ¶ 205, fn. 679.

that the costs Broadview's Service Transfer Charges were designed to recover are not "wholesale costs" reflecting services provided at the request and for the benefit of Verizon NY and indeed, are more "properly regarded as retail costs that should be recovered, if at all, in retail rates."<sup>9</sup> The NYPSC held otherwise, concluding that "Verizon [NY]'s argument that customer service transfer costs should only be recovered in retail rates is not fully supportable."<sup>10</sup> As the NYPSC explained, "there are a number of functions that [Broadview] must perform solely in conjunction with a Verizon [NY] 'winback' that it does not perform when a customer simply disconnects service . . . [including] transmitting a CSR, . . . providing a CSR or circuit identification number to Verizon [NY], processing and verifying an LSR, performing queries associated with inaccurate or incomplete LSRs, issuing firm order commitment date[s], and responding to status requests."<sup>11</sup> The NYPSC, accordingly, recognized Broadview's right under the Federal Communications Act to introduce "a customer service transfer charge specifically designed to recover the costs of performing these administrative tasks."<sup>12</sup>

---

<sup>9</sup> *Complaint and Petition of Verizon New York Inc. Concerning Service Transfer Charges Imposed by Broadview Networks, Inc.* (Order Granting, in Part, Verizon New York Inc.'s Complaint and Petition on Broadview Networks, Inc.'s Customer Service Transfer Charges), Case 05-C-0066, p. 2 (NYPSC June 29, 2005) ("*NYPSC STC Order*").

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 7 - 8.

### III.

#### **APPLYING THE LAW TO THE FACTS**

**A. Broadview Service Transfer Charges Recover Costs  
Associated with the Performance of Services  
Requested by and for the Benefit of Verizon MA**

When Verizon MA “wins” a customer from Broadview, it requests that Broadview perform a number of services for it to facilitate the migration of the customer. Initially, Verizon MA will order a copy of the customer’s customer service record (“CSR”) from Broadview. Once it has confirmed the identity of the customer, Verizon MA will submit a local service request (“LSR”) to Broadview. Broadview must then review the LSR it has received from Verizon MA for completeness and accuracy, confirming, among other things, the customer’s name, address and phone number. If the LSR has not been completely populated or the data with which is has been populated is inaccurate, Broadview will place the LSR in “jeopardy” and “query” back to Verizon MA for correction. Verizon MA will thereafter make the necessary corrections and resubmit the LSR to Broadview. Broadview will reinitiate and repeat the review process upon receipt of the resubmitted order. During this review process, Broadview will field inquiries from Verizon MA regarding the status of the LSR. Once an LSR is confirmed, Broadview will issue a firm order confirmation (“FOC”) to Verizon MA, having logged and inputted a service order into its internal systems in order to conduct a properly scheduled, confirmed and coordinated disconnection and transfer of the customer.<sup>13</sup>

---

<sup>13</sup> Broadview Exhibit No. 1 at 7 - 8. Verizon MA contends that Broadview’s Service Transfer Charges are barred by the FCC because costs incurred by a carrier in releasing a ported number “may not be recovered through tariffed intrastate charges.” Verizon Complaint at 8 – 9, fn. 9. As Broadview has made clear, its Service Transfer Charges do not recover the costs of releasing ported numbers. Broadview Exhibit No. 1 at 16.



While Verizon MA asserts in its Complaint that “Broadview does not sell and Verizon MA does not request, purchase, or need any wholesale services from Broadview in connection with the transfer of a retail customer’s service to Verizon MA,”<sup>14</sup> it has subsequently conceded that indeed it does request from Broadview and require all of the services identified above in order to effect a customer migration to its network.<sup>15</sup> Thus Verizon has acknowledged that:

Requesting a CSR from Broadview and submitting a LSR to Broadview is necessary when Verizon “wins” a customer from Broadview where Broadview used a Verizon UNE loop or used a ported number to serve the customer. The CSR provides, for example, circuit IDs, customer name and address, billing name and address, and existing call features. The LSR is necessary to instruct Broadview of Verizon’s intent to reuse the loop and release the telephone number if applicable. . . .

If there is no response received from the CLEC (*i.e.*, Broadview) within 48 hours after the submission of the LSR, Verizon will contact the CLEC to inquire about the status of the request. . . .

Although Verizon’s objective is to be accurate, errors may occur resulting in a rejection notice from the CLEC. If the CLEC rejects a Verizon LSR, Verizon will correct and resubmit the LSR in order to proceed with the migration process.<sup>16</sup>

Verizon MA further asserts in its Complaint that “[t]he type of ‘service transfer’ costs that Broadview claims to incur are properly regarded as retail costs that should be recovered, if at all, in retail rates.”<sup>17</sup> Demonstrating this point, Verizon MA

---

<sup>14</sup> Verizon Complaint at 1.

<sup>15</sup> Verizon Exhibit Nos. 4, 8, 10, 11; *see also* Broadview Exhibit No. 1 at 7 - 8.

<sup>16</sup> Verizon Exhibit No. 4.

<sup>17</sup> Verizon Complaint at 5.

contends is “the fact that Broadview would incur essentially the same costs if the customer moved to another state, discontinued wireline service, or otherwise disconnected from Broadview without opening a new account with another carrier.”<sup>18</sup> As to the latter point, however, Verizon once again subsequently conceded otherwise.

Broadview requested that Verizon MA “[c]onfirm or deny that when Verizon simply disconnects a customer by reason of the customer’s death, move to another state or otherwise, it does not: (i) request a CSR from any carrier; (ii) submit an LSR to any carrier; (iii) contact any carrier to determine the status of the LSR which it has submitted; or (v) resubmit to any carrier an LSR rejected by the carrier as incomplete or inaccurate.”<sup>19</sup> In response, Verizon acknowledged that it “is able to disconnect its retail customer without interacting with another carrier, except where Verizon is releasing a telephone number that was ported to Verizon from another carrier.”<sup>20</sup>

With respect to Verizon MA’s claim that the costs associated with the services performed at Verizon MA’s request by Broadview to facilitate the transfer of a customer from Broadview to Verizon MA are “properly regarded as retail costs that should be recovered, if at all, in retail rates,”<sup>21</sup> the NYPSC has recently determined otherwise. As noted above, the NYPSC, rejecting “Verizon [NY’s] argument that customer service transfer costs should only be recovered in retail rates, ruled that Broadview should be permitted to introduce “a customer transfer charge specifically

---

<sup>18</sup> Verizon Complaint at 5 - 6.

<sup>19</sup> Verizon Exhibit No. 5.

<sup>20</sup> *Id*; see also Broadview Exhibit No. 1 at 12 - 13.

<sup>21</sup> Verizon Complaint at 5.

designed to recover the costs of performing these administrative tasks” associated with the migration of a customer from Broadview to Verizon NY.<sup>22</sup>

**B. Broadview’s Service Transfer Charges Mirror Charges Levied on Broadview by Verizon MA For the Performance of Comparable Tasks**

Broadview’s Service Transfer Charges are set forth in Section 9.1 of its Tariff M.D.T.E. No. 2. As described therein, Broadview assesses a Service Transfer Charge “when a customer disconnects local exchange service from . . . Broadview and switches to the requesting local exchange carrier” (“LEC”).<sup>23</sup> Broadview’s Service Transfer Charges are comprised of an “Electronic Processing” charge and a “Manual Processing” charge. The former -- \$1.02 -- applies when the requesting LEC avails itself of Broadview’s electronic interface. The latter -- \$15.39 -- applies when the requesting LEC declines to utilize this electronic interface.<sup>24</sup>

Broadview modeled its Electronic Processing and Manual Processing Service Transfer Charges, respectively, on Verizon MA’s Service Order Charge and Manual Intervention Surcharge, reasoning that the costs recovered by these Verizon MA charges, as well as the activities associated with them, are comparable to those for which Broadview assesses its Service Transfer Charges.<sup>25</sup> Verizon MA’s Service Order Charge, by way of example, recovers the costs associated with the performance of those functions necessary “to issue an order in the TISOC organization resulting from a CLEC

---

<sup>22</sup> *NYPSC STC Order*, Case 05-C-0066 at 7.

<sup>23</sup> Broadview Exhibit No. 1 at p. 3.

<sup>24</sup> *Id.* at 3 – 4.

<sup>25</sup> *Id.* at 4.

request for service,”<sup>26</sup> and applies anytime a CLEC makes such a request. The Telecom Industry Services Operating Center (“TISOC”) “is the initial point of contact for the requesting CLEC.”<sup>27</sup> Verizon MA describes the functions of the TISOC as follows:

“[T]he CLEC’s service order requests are logged and assigned to a representative who examines the request for accuracy and verifies that the request contains all the information necessary to process the order. Errors and further queries related to the order are referred back to the carrier. Upon completion of the LSR review, the order is entered into the appropriate service order system. In addition, the TISOC corrects the order for any inaccurate or missing information and determines whether field surveys are required. The TISOC also issues the orders for termination of service.”<sup>28</sup>

And the activities that Verizon MA used to compute the costs associated with a Service Order Charge are described as follows:

Receive Local Service Request (LSR) from the CLEC and print, review, type and confirm the order request for new installation and/or account.

Receive Local Service Request (LSR) from the CLEC and print, review, type and confirm the order request for changes in existing account.

---

<sup>26</sup> Broadview Exhibit No. 2 at Non-Recurring Cost Model for Unbundled Network Elements (at Exh. A, p. 3) submitted by Verizon Massachusetts (Cost Witness Bruce F. Meacham) in D.T.E. 01-20, *Investigation by the Department on its Own Motion into the Appropriate Pricing, Based upon Total Element Lone-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts’ Resale Services in the Commonwealth of Massachusetts*, on May 4, 2001 (“Non-Recurring Cost Model”).

<sup>27</sup> *Id.* at Non-Recurring Cost Model at Exh. C, p. 1.

<sup>28</sup> *Id.* at Exh. C, p. 1.

Respond and/or change CLEC's pending Local Service Request.<sup>29</sup>

Broadview's Electronic Processing Service Transfer Charge recovers costs associated with tasks comparable to those for which Verizon MA levies a Service Order Charge.<sup>30</sup> The Electronic Processing Service Transfer Charge applies when the requesting carrier makes use of Broadview's Web Center. Broadview's Web Center is a web-based interactive interface accessible with a UserID and a Password via the Internet at [www.broadviewnet.com/CLEC](http://www.broadviewnet.com/CLEC). The Web Center permits requesting carriers to obtain and view CSRs on-line, to submit LSRs electronically and to verify order status on-line.<sup>31</sup>

When a requesting carrier wins a customer from Broadview, Broadview, at the requesting carrier's request, will provide the requesting carrier with the customer's CSR through the Broadview Web Center.<sup>32</sup> The requesting carrier, having confirmed the identity of the customer, will then submit an LSR electronically to Broadview via Broadview's Web Center. Upon receipt of the LSR, Broadview will review it for completeness and accuracy, confirming, among other things, customer name, address and phone number. The LSR will either be confirmed or placed in jeopardy by Broadview for reason of data flaws or modified or cancelled by the requesting carrier. If the LSR is

---

<sup>29</sup> Broadview Exhibit No. 2 at Non-Recurring Cost Testimony (at Exh. D, p. 1) submitted by Verizon Massachusetts (Cost Witness Bruce F. Meacham) in D.T.E. 01-20, *Investigation by the Department on its Own Motion into the Appropriate Pricing, Based upon Total Element Lone-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts*, on May 4, 2001 ("Non-Recurring Cost Testimony").

<sup>30</sup> Broadview Exhibit No. 1 at 7.

<sup>31</sup> *Id.* at p. 8 –9, Exh. 1.

<sup>32</sup> *Id.* at 7 – 8.

placed in jeopardy, Broadview will “query” back to the requesting carrier for correction, await a response, and then repeat the process upon receipt of a resubmitted order. Once the LSR is confirmed, Broadview will issue a FOC, having logged and inputted a service order into its internal systems in order to conduct a properly scheduled, confirmed and coordinated disconnection and transfer of the customer. Thereafter, Broadview will delete associated switch translations and facilitates number porting.<sup>33</sup>

In short, like Verizon MA’s TISOC, Broadview logs in LSRs, examines them for accuracy, verifies that the LSR contains all necessary information, refers back errors and further queries related to the LSR to the carrier, enters the into the appropriate service order system, and in addition, corrects LSRs for any inaccurate or missing information. And like Verizon’s Service Order Charge, Broadview’s Electronic Processing Service Transfer Charge recovers the costs associated with the receipt of LSRs and the printing, reviewing, typing and confirmation of order requests and the response to and/or the changing of LSRs.<sup>34</sup>

There is a like degree of comparability between the costs recovered and the tasks subsumed by Broadview’s Manual Process Service Transfer Charge and Verizon MA’s Manual Intervention Surcharge.<sup>35</sup> The latter “appl[ies] when the

---

<sup>33</sup> Broadview Exhibit No. 1 at 7 – 8.

<sup>34</sup> Verizon MA asserts that Broadview “incurs little or no costs” in performing these services. Verizon MA Exhibit No. 1 at 4. Given the comparability of the services for which Verizon levies a Service Order Charge and the services for which Broadview assesses an Electronic Processing Service Transfer Charge, either Broadview’s Electronic Processing Service Transfer Charge, which mirrors Verizon MA’s Service Order Charge, is set at an appropriate level or Verizon MA’s Service Order Charge is set too high.

<sup>35</sup> *Id.* at 4 – 5.

electronic ordering system is not used to place an order for services.”<sup>36</sup> In other words, a Manual Intervention Surcharge is levied by Verizon MA if a mechanized interface is available and “a CLEC chooses not to submit an order electronically.”<sup>37</sup> For example, Verizon MA charges a Manual Intervention Surcharge if a CLEC submits a request by facsimile, rather than through an electronic interface. The Manual Intervention Surcharge recovers “[t]he costs . . . of the activity required for a Verizon [MA] service representative at the TISOC to receive and translate a local service request (“LSR”) from a CLEC and to respond manually with a positive confirmation of order acceptance.”<sup>38</sup>

Broadview’s Manual Processing Service Transfer Charge likewise is intended to recover the additional costs Broadview incurs when a carrier declines to utilize Broadview’s Web Center when requesting a CSR and when submitting, reviewing, modifying, canceling, and/or confirming the status of an LSR.<sup>39</sup> Thus, Broadview levies a Manual Processing Service Transfer Charge on Verizon MA when it requests a CSR and submits an LSR by facsimile or the email equivalent thereof, thereby requiring Broadview to manually retrieve and physically provide CSRs, manually print LSRs and key their contents into Broadview’s systems and to field telephone calls verifying order status. In short, Broadview’s Manual Processing Service Transfer Charge recovers costs

---

<sup>36</sup> Verizon New England Inc. Tariff M.D.T.E., No. 17, Part A, § 3.3.2.

<sup>37</sup> Broadview Exhibit No. 2 at Non-Recurring Cost Testimony at p. 16 .

<sup>38</sup> *Id.*; *see also* Verizon Exhibit No. 7.

<sup>39</sup> Broadview Exhibit No. 1 at 5 - 6.

which Verizon MA causes Broadview to incur by refusing to take advantage of the most efficient and cost-effective means of interacting with Broadview.<sup>40</sup>

As is apparent, the services for which Broadview assesses either an Electronic Processing or Manual Processing Service Transfer Charge mirror those for which Verizon MA levies Service Order Charges and Manual Intervention Surcharges. Hence, Broadview's Electronic Processing and Manual Processing Service Transfer Charges recover costs comparable to those recovered by Verizon MA's Service Order Charges and Manual Intervention Surcharges.

**C. Verizon Acknowledges that for Years It has Gratuitously Imposed Additional Costs on Broadview**

Broadview introduced its Web Center in 2002.<sup>41</sup> As noted above, Broadview's Web Center is designed to facilitate the migration of customers by allowing the carriers to which customers will be migrating to obtain and view CSRs on-line, to submit LSRs electronically and to verify order status on-line.<sup>42</sup> Providing carriers with an electronic interface also substantially reduces the man hours and other resources Broadview must dedicate to the facilitation of customer migrations.<sup>43</sup>

Broadview notified all carriers, including Verizon MA, of the availability of its Web Center when it first became available in 2002.<sup>44</sup> Broadview continues to notify carriers of the availability of the Web Center when they manually request CSRs and

---

<sup>40</sup> Broadview Exhibit No. 1 at 5 - 6.

<sup>41</sup> *Id.* at 9.

<sup>42</sup> *Id.* at p. 10 - 11, Exh. 1.

<sup>43</sup> *Id.*



manually submit LSRs. Given that Broadview's Web Center is a web-based interactive interface accessible via the Internet, all a requesting carrier need do to utilize it is to secure a UserID and a Password from Broadview and log on to [www.broadviewnet.com/CLEC](http://www.broadviewnet.com/CLEC). To date, roughly 90 carriers have secured UserIDs and Passwords from Broadview, and made use of, Broadview's Web Center.<sup>45</sup>

Up until April 15th of this year or for nearly three years after Broadview introduced its Web Center, Verizon MA had steadfastly refused to utilize Broadview's Web Center, choosing instead to email OBF forms via PDF documents – the email equivalent of faxing.<sup>46</sup> In so doing, Verizon MA gratuitously caused Broadview to incur additional and wholly unnecessary costs. For example, Verizon MA's refusal to use Broadview's Web Center required Broadview to manually retrieve and physically provide to Verizon MA CSRs which Verizon MA could otherwise have viewed on-line through Broadview's Web Center simply by clicking "CSR" and entering the required information. Verizon MA's refusal to use Broadview's Web Center further required Broadview to manually print LSRs and to key their contents into Broadview's systems – tasks which would have been accomplished electronically if Verizon MA had used Broadview's Web Center and simply clicked "LSR" and keyed-in the required information. Verizon MA's refusal to use Broadview's Web Center also required Broadview to field calls from Verizon MA verifying order status which status reports would have been available on-line simply by clicking "Review LSR" if Verizon MA had utilized Broadview's Web Center. Moreover, these additional resource commitments

---

<sup>44</sup> *Id.* at p. 9.

<sup>45</sup> Broadview Exhibit No. 1 at 9.

<sup>46</sup> *Id.* at 9.

were amplified each time Verizon MA modified -- either on its own accord or as a result of data flaws identified by Broadview -- or canceled an order, all of which could have been done on-line simply by clicking “Modify LSR” if Verizon MA had utilized Broadview’s Web Center. Each of these many actions required the commitment of personnel and other resources which Broadview would not have been required to commit if Verizon MA had utilized the Broadview Web Center.<sup>47</sup>

Verizon MA acknowledges that it has been aware of the availability of the Broadview Web Center since 2002, when Broadview first requested that Verizon MA utilize its electronic processes to request CSRs and submit LSRs.<sup>48</sup> Verizon MA further acknowledges that it did not use Broadview’s Web Center prior to April of this year.<sup>49</sup> According to Verizon MA, “it did not have the appropriate systems and processes in place to use Broadview’s Web Center” in 2002.”<sup>50</sup> Verizon declined to respond to Broadview’s inquiry as to when it purportedly became capable of using Broadview’s Web Center, confirming that for some undisclosed period of time prior to April, it has been capable of utilizing the use of the Web Center.<sup>51</sup> Accordingly, at a minimum, Verizon MA has for some period of time gratuitously elected not to utilize Broadview’s electronic processes despite admittedly being capable of doing so.

---

<sup>47</sup> Broadview Exhibit No. 1 at 10 - 11, Exh. 1.

<sup>48</sup> Broadview Exhibit Nos. 4, 5.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*; *see also* Broadview Exhibit No. 1 at 10.

That having been said, Verizon MA's assertion that it was not capable of using the Web Center in 2002 strains credibility. As noted above, the Web Center is an interactive interface – [www.broadviewnet.com/CLEC](http://www.broadviewnet.com/CLEC) -- accessible over the Internet, which requires only a "UserID" and a "Password" to log into. Moreover, as further noted above, roughly 90 carriers have secured UserIDs and Passwords from Broadview, and made use of, Broadview's Web Center.<sup>52</sup>

Verizon MA opines that it is not required to use Broadview's Web Center because "the CLEC Industry Guidelines state that '[t]hat New Local Service Provider (New LSP) may transmit the CSR/CSI request via facsimile, electronic mail, electronic data interchange, or any other means negotiated between the two carriers' and that '[a]ll carriers must, at a minimum, allow transmission of CSR/CSI by facsimile.'"<sup>53</sup> Broadview does not dispute that Verizon MA may submit CSRs and request LSRs via facsimile or the email equivalent thereof. If Verizon MA elects to use manual processes rather than availing itself of Broadview's Web Center, however, it should be required to compensate Broadview for the additional costs it causes Broadview as a result of that choice. Just as Verizon levies a Manual Intervention Surcharge "when a [CLEC] chooses not to use electronic interfaces,"<sup>54</sup> so too should Broadview be able to impose on Verizon a Manual Processing Service Transfer Charge when Verizon gratuitously declines to utilize Broadview's Web Center.

---

<sup>52</sup> Broadview Exhibit No. 1 at 9 - 10.

<sup>53</sup> Verizon Exhibit 1 at 16, fn. 7.

<sup>54</sup> Verizon New England Inc. Tariff M.D.T.E., No. 17, Part A, § 3.3.2.

**D. Verizon Failure to Pay Charges Resident  
In Effective Tariffs was and is Illegal**

It is well settled that an effective tariff has the force of law.<sup>55</sup> “[T]ariffs are not simple contracts, but rather have the force and effect of law, and as such, must be complied with both by providers and by the users and/or purchasers of such services.”<sup>56</sup> Tariffed rates “bind both carriers and customers with the force of law.”<sup>57</sup> Chapter 159 of the Massachusetts General Laws and the Commission’s Rules provide specific means to challenge a carrier’s tariffed rates and charges and indeed provide that tariffed rates shall be deemed *prima facie* lawful until changed or modified by the Department.<sup>58</sup> The Commission’s processes are the exclusive means by which tariffed rates and charges may be contested; the law does not recognize self-help as an acceptable alternative. As couched by one Court, “the remedy provided by our Public Service Law for excessive rates is the only relief open to plaintiff.”<sup>59</sup>

---

<sup>55</sup> *Lawrence Marcus v. AT&T Corp.*, 138 F.3d 46, 56 (2d Cir. 1998); *AT&T v. City of New York*, 83 F.3d 549, 552 (2d Cir. 2001); *American Tel. and Tel. Co. v. IMR Capital Corp.*, 888 F. Supp. 221, 249 (D.Mass. 1995); *Video Education Career Institute v. American Telephone and Telegraph Co.*, 1990 U.S. Dist. LEXIS 12570 (D. Mass. 1990); *Disk ‘N’ Data, Inc. v. AT&T Communications*, 415 Mass. 886, 888, 616 N.E.2d 76 (1993).

<sup>56</sup> *Special Funds Conservation Committee v. Superior Infrastructure Technologies, Inc., Capsule Communications, Inc. and Verizon New York Inc.*, 2002 U.S. Dist. LEXIS 17347 (April 15, 2002)

<sup>57</sup> *ICOM Holdings, Inc. v. MCI WorldCom, Inc.*, 238 F.3d 219, 221 (2d Cir. 2001).

<sup>58</sup> Mass. Gen. Laws, c. 159, § 17.

<sup>59</sup> *Joseph M. Purcell v. New York Central Railroad Company*, 268 N.Y. 164, 171 – 72 (Ct. of App. 1935).

Verizon MA has acknowledged that it has not paid any of the tariffed Service Transfer Charges assessed by Broadview.<sup>60</sup> Until it filed its Complaint, Verizon MA did not seek to avail itself of the Department's processes for challenging the lawfulness of these charges. Moreover, while its Complaint has been pending, Verizon MA has continued to refuse to pay these tariffed charges. Verizon MA's failure to pay tariffed charges – which, as noted above, are deemed *prima facie* lawful -- is unlawful, as is its effort to claim for itself the authority of the Department in unilaterally declaring Broadview's Service Transfer Charges to be unlawful.

Verizon MA seeks to avoid its unlawful conduct by claiming that Broadview's Service Transfer Charges do not apply to it because they are resident in Broadview's access tariff.<sup>61</sup> However, as set forth in Broadview's tariff, the Service Transfer Charges apply to "requesting local exchange carriers" and hence are assessable on Verizon MA.<sup>62</sup> Verizon is bound by the force of law to pay Broadview's Service Transfer Charges unless or until such charges are removed from Broadview's tariffs.

Verizon MA further seeks to avoid its unlawful actions by asserting that it has "appropriately disputed the charges associated with Service Transfers" under its interconnection agreement with Broadview. Once again Verizon MA's arguments are unavailing. Dispute resolution provisions in interconnection agreements permit a party to

---

<sup>60</sup> Letter of Barbara Anne Sousa, Assistant General Counsel, Verizon MA, to Mary L. Cottrell, Secretary, Massachusetts Department of Telecommunications and Energy, filed in D.T.E.05-04 on March 22, 2005 ("Sousa Letter"); see also Broadview Exhibit No. 1 at 17. Outstanding STC charges are currently approaching \$70,000. Broadview Exhibit No. 9.

<sup>61</sup> Verizon Complaint at 2 – 3, fn. 2.

<sup>62</sup> Broadview Networks, Inc. Tariff M.D.T.E. No. 2, Section 9.1; *see also* Broadview Exhibit No. 1 at 18.

contest how a tariffed charge is levied, but not to challenge the lawfulness of the tariffed charge. Thus a carrier can dispute a tariffed charge which is assessed erroneously – *e.g.*, for a service that is not provided -- but it cannot dispute a tariffed charge which it simply believes to be set too high.<sup>63</sup>

#### IV

#### **CONCLUSION**

By reason of the foregoing, Broadview urges the Commission to deny the Verizon MA Complaint with prejudice and to direct Verizon MA to pay not only the Service Transfer Charges that are levied by Broadview in the future, but to pay all of the outstanding charges which Verizon MA has heretofore unilaterally refused to pay. Just as Broadview must pay Verizon MA's tariffed charges in order to allow Verizon MA to recover costs incurred at the request and for the benefit of Broadview, so too should Verizon MA be required to pay Broadview charges designed to recover costs it incurs at the request and for the benefit of Verizon MA. Broadview suffers from a competitive disadvantage if, unlike Verizon MA, it must perform services without compensation. Fairness and equity dictate that Broadview should be paid for work it performs at the request and for the benefit of Verizon MA.

As Broadview has demonstrated herein, its Service Transfer Charges recover costs incurred at the request and for the benefit of Verizon MA and hence are not only lawful, but, because they mirror charges levied on Broadview by Verizon MA for

---

<sup>63</sup> Broadview Exhibit No. 1 at 18.

the performance of comparable tasks, are just and reasonable as well. Broadview urges the Department to so find.

Respectfully submitted,

---

Charles C. Hunter  
Executive Vice President and General Counsel  
Broadview Networks, Inc.  
115 Stevens Avenue, Third Floor  
Valhalla, New York 10595  
Telephone: (914) 468-8214  
Facsimile: (914) 742-5818  
Email: [chunter@broadviewnet.com](mailto:chunter@broadviewnet.com)

July 11, 2005

## **CERTIFICATE OF SERVICE**

I, Charles C. Hunter, do hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 220 CMR 1.05(I) (Department's Rules of Practice and Procedure).

Dated at Valhalla, New York this 11th day of July, 2005.

---

Charles C. Hunter

Counsel for Broadview Networks, Inc.